



BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

Waiver No. 05-02-003

A public employee must not represent a person in a particular matter if the County has a direct and substantial interest in that matter that is adverse to the interests of the person being represented. Beth Mellen Harrison, an attorney and a member of the County's Human Rights Commission (HRC), seeks a waiver of this prohibition in order to file an appellate brief on behalf of a party seeking to overturn an HRC decision. The Commission will grant the requested waiver because

Ms. Harrison is employed as an attorney for the Public Justice Center (Center), a nonprofit organization located in Baltimore, Maryland. The Center has agreed to submit an *amicus curiae* ("friend of the court") brief in *Flaa v. Manor County Club*, a discrimination case originally heard and decided by the HRC that is now pending before the Maryland Court of Appeals. The Center will argue that the HRC incorrectly calculated the award of attorney's fees Manor County Club must pay to Ms. Flaa based upon her successful discrimination claim.

With some exceptions inapplicable here, the ethics law prohibits a public employee from representing a person in a particular matter if the County has a direct and substantial interest in that matter that is adverse to the interests of the person being represented. Section 19A-14(g)(1)(B) states:

A public employee must not with respect to a particular matter represent another person, or provide advice to another person that would qualify as an expert opinion in a court, if:

(A) a County agency or the County is a party to the matter and the person being assisted has a position adverse to the County agency or the County;
or

(B) the County agency or the County has a direct and substantial interest in the matter that is adverse to the interests of the person being assisted.

Ms. Harrison's representation of the Center falls within this prohibition because it is advocating the reversal of an HRC decision, albeit on the issue of attorney's fees. But the Commission may waive this prohibition if it finds that:

- (1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee or class of employees performing official duties outweighs the actual or potential harm of any conflict

of interest; and

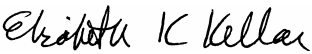
(3) granting the waiver will not give a public employee or class of employees an unfair economic advantage over other public employees or members of the public.

The Commission finds that Ms. Harrison meets these standards. First, the best interests of the County are served by retaining a civil rights attorney as a member of the HRC. Second, Ms. Harrison did not participate in the underlying HRC decision that is the subject of this appeal. In fact, she was not even a member of the HRC at the time the Flaa decision was made. Third, Ms. Harrison will recuse herself from participating in any HRC matter related to the Flaa case. Fourth, while the correctness of an HRC decision is at the heart of the appeal, the County has no financial interest in this matter. Indeed, the County has not sought to participate in the appeal before the Court. Finally, the waiver is limited to the representation of this one client (the Center) in this one matter (Flaa).

The requested waiver is granted.

FOR THE COMMISSION:

February 22, 2005


Elizabeth K. Kellar, Chair